

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SUNDIATA MUSA BOTLEY,

Petitioner,

v.

WASHINGTON STATE and PIERCE  
COUNTY,

Respondents.

No. C10-5460 BHS/KLS

**REPORT AND RECOMMENDATION**  
**Noted For: August 27, 2010**

This habeas action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. The Court is advised by Petitioner Sundiata Musa Botley that he seeks an extension for filing his habeas corpus petition or alternatively, leave to withdraw his petition. Dkt. 4. Accordingly, the undersigned recommends that this action be dismissed pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

**DISCUSSION**

On June 30, 2010, Mr. Botley filed a proposed petition for writ of habeas corpus and motion for counsel. Dkt. 1. On July 1, 2010, the Clerk advised Mr. Botley that he had to either pay the filing fee of \$5.00 or submit a completed application to proceed *in forma pauperis*. Dkt. 2. Mr. Botley filed a motion for leave to proceed *in forma pauperis* on July 27, 2010. Dkt. 3. That motion remains pending. On the next day, Mr. Botley sent a letter to the Clerk stating that he was enclosing the \$5.00 filing fee; however, the fee was not enclosed with the letter. In

1 addition, Mr. Botley stated that he was not prepared to pursue his habeas petition and asked that  
2 it be filed and an unspecified extension of time be granted or that he be allowed to withdraw his  
3 petition. Dkt. 4.

4 Rule 41(a)(1) of the Federal Rules of Civil Procedure provides, in pertinent part:

5 [A]n action may be dismissed by the plaintiff without order of court (i) by filing a  
6 notice of dismissal at any time before service by the adverse party of an answer or  
7 of a motion for summary judgment, whichever first occurs . . . .

8 No adverse party has yet been served in this action.

9 Petitioner has asked this court for leave to withdraw his petition. Dkt. 4. The  
10 undersigned recommends that Mr. Botley's letter be construed as a request for voluntary  
11 dismissal of this action.

### 12 CONCLUSION

13 The Court should dismiss this action without prejudice.

14 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
15 Procedure, the parties shall have fourteen (14) days from service of this Report and  
16 Recommendation to file written objections. See also Fed. R. Civ.P. 6. Failure to file objections  
17 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140  
18 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the  
19 matter for consideration on **August 27, 2010**, as noted in the caption.  
20

21 DATED this 3rd day of August, 2010.

22  
23   
24 Karen L. Strombom  
25 United States Magistrate Judge  
26